

**POLICE DEPARTMENT
CITY OF NEW YORK**

INTERNAL AFFAIRS BUREAU

INVESTIGATING OFFICER'S REPORT

From: Sgt. Steven Alfano

Command: Group 54

Case #: 08-0934

Log#: 08-47112

Accompanying Investigator: Insp. Patrick J Keane

Subject: ALLEGATION OF EXCESSIVE FORCE CONFINES 71st PRECINCT

Investigative Action: P.G. 206-13 HEARING P.O. KEVIN MALONEY

Time: 1523 hrs

Date: 03/11/10

On the above time and date, the I/O's conducted a P.G. 206-13 hearing of subject officer P.O. Kevin Maloney Tax # 943515 who was represented by attorney Paul Martin. Also present for the hearing was Advocate Hiram Lopez. The following is a synopsis of the electronically recorded interview.

P.O. Maloney stated that on October 15th 2008 he was assigned to TD 32 and was assigned post XP 33 which covers the B and Q lines. At approximately 1500 hrs PO Maloney was on the southbound platform of the Prospect Park train station when he sees a male later identified as Michael Mineo being chased by two (2) uniform officers later identified as PO Cruz and PO Kern down the stairs onto the southbound platform Mr. Mineo turns around and flees back up the stairs with the two (2) officers in pursuit. PO Maloney gives pursuit and when he reaches the top of the stairs he observes an officer in uniform later identified to be P.O. Jugraj apprehend Mr. Mineo. The apprehension was described as a close line which was PO Jugraj extending his right arm and striking Mr. Mineo across the chest area with his arm. Mr. Mineo then falls to the ground and is lying face down on the ground. PO Jugraj went down to his knees and is holding Mr. Mineo down by the top half of his body. PO Jugraj grabs Mr. Mineo's right arm and states "Give us your arms, stop resisting." PO Maloney never sees PO Jugraj punch, strike or kick Mr. Mineo. PO Maloney grabs onto Mr. Mineo's left hand and also states "give us your arms, stop resisting." PO Maloney states he never punches, strikes or kicks Mr. Mineo. PO Maloney is able to grab onto Mr. Mineo's left hand and pull his arm back while Mr. Mineo is resisting the entire time. PO Maloney describes the resisting as not allowing the officers to bring his hands behind his back and wiggling his legs from left to right trying to escape from them. PO Cruz and PO Kern show up simultaneously. PO Cruz stands by Mr. Mineo's head and PO Kern was by the lower half of Mr. Mineo straddling his body with his left knee in contact with the ground. While the officers are attempting to cuff Mr. Mineo PO Maloney sees PO Kern holding his closed asp in his right hand while pressing it down at a 45 degree angle across Mr. Mineo's left butt cheek. PO Maloney then sees

the asp move from left to right into Mr. Mineo's butt crack while he is not handcuffed. PO Maloney states that he never sees Mr. Mineo cuffed while the asp is around Mr. Mineo's buttocks. PO Maloney states that Mr. Mineo was still moving his lower section of his body because PO Maloney's knee was by Mr. Mineo's waist and he could feel him moving. PO Maloney believes he was moving his legs to evade arrest from the three (3) of them. PO Kern's asp was placed in the lower middle of Mr. Mineo's buttocks 1/3 of the asp into the buttock area. Kern is not making any comments while his asp is in Mr. Mineo's buttock area. Mr. Mineo is wearing pants and has boxers on. His pants were baggy and were hanging around the bottom of his buttocks. PO Kern's asp is on top of Mr. Mineo's boxers and Mr. Mineo's skin is not exposed. When PO Maloney turns back around Mr. Mineo is being cuffed. PO Maloney never saw PO Kern applying pressure with the asp into Mr. Mineo's buttock area while he was being cuffed.

PO Maloney was informed by the I/O that during trial he clearly testified that Mr. Mineo was in handcuffs and you saw PO Kern applying pressure with his asp down into the buttock area while Mr. Mineo was handcuffed. PO Maloney's lawyer Paul Martin stated that PO Maloney did not say that at trial. The I/O read PO Maloney his exact testimony that he testified at trial (That the asp was placed on Mineo's buttocks and he saw the asp moving left to right into Mineo's butt crack 1/2 an inch out of sight, pressure is still being applied and Mineo is handcuffed and your reaction was to get Michael Mineo standing upright) Attorney Paul Martin stated that they differ to that testimony unless we show them transcripts. PO Maloney is asked again to describe whether Mr. Mineo was handcuffed while PO Kern placed the asp against his buttocks area and he reiterates that he did not see PO Kern with his asp near Mr. Mineo's buttock area while he was handcuffed.

PO Maloney does not know if PO Kern moved the asp into Mr. Mineo's buttock area intentionally or thought anything about it on October 15th 2008. PO Maloney did not think there was anything unusual about the asp being in Mr. Mineo's buttock area and it was not his impression that PO Kern was trying to insert the asp into Mr. Mineo's rectum on October 15 2008. PO Maloney now believes that it is possible that PO Kern was trying to insert the asp into Mr. Mineo's rectum. PO Kern never stated anything to PO Maloney or made any statements that would indicate that it was his intention to insert the asp into Mr. Mineo's rectum. PO Maloney never tried to stop PO Kern from applying his asp into Mr. Mineo's buttock area because he didn't think it was inappropriate at that time. PO Maloney never heard Mr. Mineo make any statements or comments throughout the entire cuffing process. After Mr. Mineo was cuffed PO Jugraj picked him up by the waist area standing Mr. Mineo upright. Mr. Mineo's boxers were still pulled up and his pants were hanging by his lower buttock area. PO Maloney did not see any holes in Mr. Mineo's boxers or any blood on Mr. Mineo. PO Cruz grabs hold of Mr. Mineo by his arm and as they are standing face to face Mr. Mineo states "Why did you stick a walkie talkie antenna up my ass?" PO Maloney did not hear PO Cruz say anything back to Mr. Mineo. PO Maloney hears PO Kern state "He's an EDP."

PO Maloney saw the booth clerk and three (3) to four (4) other adults in the vicinity of the incident. No civilians made any comments or statements to PO Maloney.

PO Cruz held onto Mr. Mineo's arm and escorted him up to street level. PO Maloney picked up his radio that had fallen to the ground and followed Mr. Mineo and the Officers upstairs to the street level. While walking up the stairs he hears Mr. Mineo state one more time "Why did you stick a walkie talkie antenna up my ass?" Once they reach street level Mr. Mineo is walked approximately 2 ½ car lengths to reach the RMP that is double parked on Flatbush Avenue. Mr. Mineo is placed in the rear of the marked RMP's passenger side door. Mr. Mineo is carrying on with comments as the door is closed but PO Maloney can't hear what he is saying. PO Maloney and PO Cruz walked back into the train station to search for any marijuana that might have been ditched by Mr. Mineo during the pursuit. While PO Maloney is searching for any discarded marijuana no civilians approach or make any comments to him.

PO Maloney returns back to street level and PO Cruz, PO Jugraj and PO Kern all discuss the possible charges that Mr. Mineo could be charged with. PO Jugraj opens the RMP door and Mr. Mineo is rear cuffed exposing his hands to the left side of his body stating "I'm bleeding." PO Maloney observed the blood on Mr. Mineo's hand. The other officers continue to have a discussion which PO Maloney isn't included in and doesn't hear what they are saying. PO Kern then states "He is getting a summons." But PO Kern never indicated what Mr. Mineo was getting the summons for. PO Maloney then resumes patrol.

PO Maloney believes that Mr. Mineo should have been arrested for resisting arrest and agrees that he should have called a supervisor to the scene but failed to do so. PO Maloney did not believe at the time of the incident that any corruption or serious misconduct took place. At the time when Mr. Mineo made the allegations that someone stuck a walkie talkie antenna up his ass he did not believe that was an allegation of corruption or serious misconduct.


PO Maloney stated that he reported the incident a couple days after he saw the incident in the newspaper to his delegate PO Conovatch and told him that it was not PO Cruz as alleged it was PO Kern that had the asp out and it's possible that it occurred, that the asp was shoved into Mineo's rectum. PO Maloney was ask and reiterated that he never saw PO Kern insert his asp into Mineo's rectum. PO Maloney later told Capt Hoffman of the incident after speaking with his PBA Attorneys. PO Maloney could not recall how many days after the incident that he reported it to his delegate or Captain.

PO Maloney was instructed on the proper reporting of allegations of corruption or misconduct.

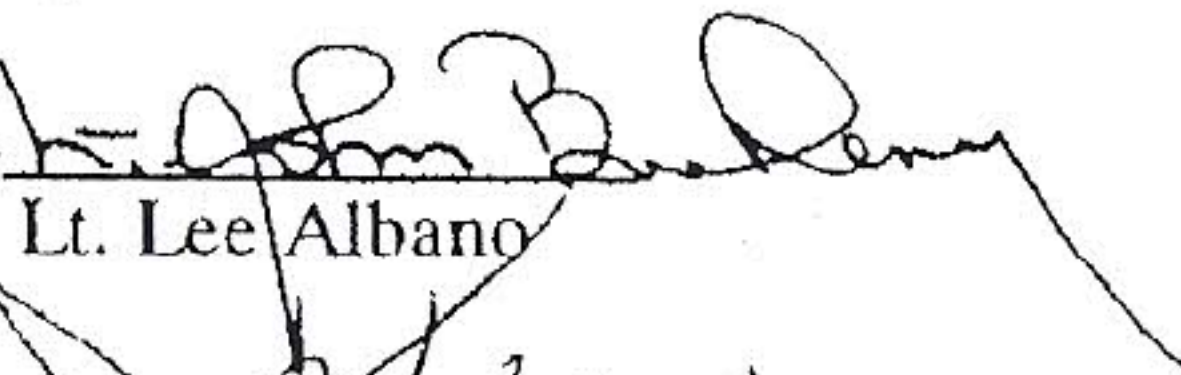
EQUIPMENT USED: Sony cassette recorder and Maxell cassette tape.

INVESTIGATING OFFICER: 

Sgt. Steven Alfano

X.O. 

Capt. Nicholas Scarpa

Supv. 

Lt. Lee Albano

C.O. 

Insp. Patrick J. Keane